

Message Text

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TO AMEMBASSY ABIDJAN PRIORITY

AMEMBASSY ADDIS ABABA

AMEMBASSY BAMAKO

AMEMBASSY LIBREVILLE

AMEMBASSY LOME

AMEMBASSY NAIROBI

AMEMBASSY OUAGADOUGOU

AMEMBASSY YAOUNDE

INFO AMEMBASSY PARIS

C O N F I D E N T I A L STATE 032314

FOR AMBASSADOR; -- PARIS RFC FOR LERCHBAUM

E.O. 11652: N/A

TAGS: CFED

SUBJECT: TAW--TRANSFERS OF FUNDS TO EMBASSY BANK
ACCOUNTS

REF: STATE 022346

1. TAW HAS BEEN DISPOSING OF A SUBSTANTIAL PART OF ITS
ASSETS TO PAY AMOUNTS DUE TO ITS CREDITORS INCLUDING OVER-
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SEAS PRIVATE INVESTMENT CORPORATION ("OPIC"), A USG

AGENCY, PURSUANT TO A COMPOSITION AGREEMENT AMONG TAW AND SUCH CREDITORS WHICH PROVIDES, AMONG OTHER THINGS, THAT TAW SHALL TRANSFER FUNDS TO SUCH PARTIES AS THE CREDITORS COMMITTEE MAY ELECT.

2. AFTER OBTAINING DEPARTMENT AND TREASURY ADMINISTRATIVE APPROVAL TO DO SO, OPIC REQUESTED THE CREDITORS COMMITTEE TO ASK TAW TO DEPOSIT OPIC'S SHARE OF LOCAL CURRENCIES IN CERTAIN AFRICAN COUNTRIES, INCLUDING ADDRESSES, IN U.S. EMBASSY ACCOUNTS IN SUCH COUNTRIES, WHICH WAS DONE. LEGAL AUTHORITY TO DO SO WAS CONFIRMED BY A NOVEMBER 4, 1975 LEGAL OPINION FROM L/M OF DEPARTMENT TO TAW, AFTER CONTACT WITH RELEVANT U.S. EMBASSIES INCLUDING ADDRESSEE POSTS EXCEPT KENYA.

3. OUR RECORDS SHOW FOLLOWING DATES AND AMOUNTS TRANSFERRED TO EMBASSY ACCOUNTS:

A. ETHIOPIA: ETHIOPIAN DOLLARS 54,712.17 ON MAY 29, 1975; 71,132 ON AUGUST 22, 1975; AND 12,419.50 ALSO ON AUGUST 22, 1975.

B. CAMEROON: CFA FRANCS 99,000 ON JUNE 5, 1975; 108,647 ON JULY 9, 1975; AND 100,446 ON OCTOBER 10, 1975.

C. IVORY COAST: CFA FRANCS 7,931,213 ON JUNE 20, 1975; 2,188,710 ON SEPTEMBER 2, 1975; AND 2,189,129 ON OCTOBER 3, 1975. - -

D. GABON: CFA FRANCS 6,627,452 ON JULY 7, 1975; 1,610,429 ON SEPTEMBER 4, 1975; AND 1,500,000 ON SEPTEMBER 23, 1975. - - - --

E. TOGO: CFA FRANCS 108,647 ON JULY 30, 1975; AND 412,574 ON OCTOBER 4, 1975.

F. MALI: MALI FRANCS 24,419,444 ON JULY 4, 1975; 16,608,007 ON AUGUST 21, 1975; AND 5,951,137 ON SEPTEMBER 28, 1975. -

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G. UPPER VOLTA: CFA FRANCS 4,988,713 ON AUGUST 30, 1975; AND 1,667,908 ON DECEMBER 5, 1975.

H. KENYA: KENYA SHILLINGS 1,011,986 ON AUGUST 20, 1975.

4. AS MENTIONED REFTTEL, TAW HAS NOW BROUGHT SUIT AGAINST THESE CREDITORS IN NEW YORK ALLEGING, AMONG OTHER THINGS, THAT THESE FUNDS WERE TRANSFERRED IN VIOLATION OF LOCAL

LAW AND SEEKING RETURN OF FUNDS DEPOSITED IN U.S. EMBASSY BANK ACCOUNTS. TAW HAS SUBMITTED LEGAL OPINIONS WHICH QUESTION THE CONCLUSIONS REACHED BY L/M WITH RESPECT TO ARRANGEMENTS AT ADDRESSEE POSTS (EXCEPT MAIROBI WHERE NO OPINIONS OR CONCLUSIONS WERE OFFERED).

5. IN VIEW OF INVOLVEMENT PRIOR DEPARTMENT AND TREASURY POSITIONS, USE OF EMBASSY BANK ACCOUNTS, AND ROLE USG AGENCY OPIC, AND TO PROTECT TAW FROM ADVERSE ACTION IN EVENT PAST TRANSFERS MIGHT OTHERWISE BE CONSIDERED ILLEGAL, WE WOULD LIKE TO BREAK IMPASSE ON LEGALITY ISSUE QUICKLY AS FOLLOWS.

6. EACH ADDRESSEE POST (INCLUDING KENYA) SHOULD OBTAIN FROM LOCAL GOVERNMENT OFFICIAL EMPOWERED TO DO SO APPROVAL ON BEHALF OF HIS GOVERNMENT OF PAST TRANSFERS TO EMBASSY

ACCOUNTS FROM TAW (IN REPAYMENT OF DEBT OWED TO USG THROUGH OPIC) IN SUBSTANTIALLY FOLLOWING FORM: QUOTE: THE GOVERNMENT OF (COUNTRY) HEREBY APPROVES THE TRANSFERS HERETOFORE MADE BY TAW INTERNATIONAL LEASING CORPORATION OF (TYPE OF LOCAL CURRENCY), WHICH CONSTITUTE THAT PORTION OF TAW FUNDS OWED OPIC, AN AGENCY OF THE USG, TO THE BANK ACCOUNT OF THE UNITED STATES EMBASSY TO (HOST COUNTRY) TO BE USED ONLY FOR OFFICIAL USG EXPENDITURES IN (HOST COUNTRY) AND CONFIRMS THAT SUCH TRANSFERS DO NOT RPT NOT CONTRAVENE THE LAWS OF (HOST COUNTRY). END QUOTE. THIS DOCUMENT SHOULD THEN BE AUTHENTICATED BY U.S. CONSUL OR OTHER APPROPRIATE U.S. OFFICIAL. IT IS IMPORTANT TO HAVE SUCH DOCUMENT FROM APPROPRIATE OFFICIAL OF EACH HOST GOVERNMENT ITSELF AND NOT RPT NOT MERELY A GENERAL STATEMENT OF LOCAL CURRENCY CONTROL REGULATIONS.

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7. THIS REQUEST SHOULD BE MADE ON BEHALF OF USG (AND NOT RPT NOT ON BEHALF OF TAW OR ITS CREDITORS COMMITTEE) ON AT LEAST TWO BASES: FIRST, THAT BILATERAL AGREEMENTS EFFECTED THROUGH EXCHANGE OF DIPLOMATIC NOTES BETWEEN USG AND APPLICABLE HOST GOVERNMENTS, UNDER WHICH TAW PROJECT WAS APPROVED, RECOGNIZE AS VALID AND EFFECTIVE THE TRANSFERS, PURSUANT TO AN INVESTMENT GUARANTY, TO USG FROM AN INVESTOR OF LOCAL CURRENCIES (WHICH MAY THEN BE USED FOR USG EXPENDITURES IN HOST COUNTRY); AND SECOND, AS A MATTER OF COMITY BETWEEN USG AND HOST COUNTRY GOVERNMENT ON A POINT OF PARTICULAR IMPORTANC: TO USG.

8. IMMEDIATELY UPON RECEIPT THIS TELEGRAM, LOCATE DOCUMENTS LISTED BELOW AND CABLE DEPARTMENT WHEN EMBOFF WILL BE AVAILABLE TO RECEIVE TELCON FROM DEPARTMENT/OPIC AND

GIVING POST TELEPHONE NUMBERS. SUCH TELEPHONE CALL SHOULD BE MADE PRIOR TO APPROACH TO HOST GOVERNMENT.

9. BILATERAL INVESTMENT GUARANTY AGREEMENT ("IGA") HAS BEEN ENTERED INTO BETWEEN USG AND EACH OF FOLLOWING HOST GOVERNMENTS. IGA AND HOST FOREIGN GOVERNMENT APPROVAL ("FGA") OF TAW PROJECT ISSUED UNDER EACH IGA SHOULD BE IN POSSESSION OF U.S. EMBASSY TO SUCH HOST COUNTRY, AND ARE DESCRIBED AS FOLLOWS:

(A) KENYA: IGA EFFECTED BY EXCHANGE OF NOTES SIGNED AT NAIROBI MARCH 19 AND APRIL 20, 1964 (TIAS 5573); FGA DATED OCTOBER 25, 1971.

(B) ETHIOPIA: IGA EFFECTED BY EXCHANGE OF NOTES SIGNED IN ADDIS ABABA AUGUST 3, 1962 (TIAS 5134), AMENDED BY EXCHANGE OF NOTES SIGNED AT ADDIS ABABA MARCH 17, 1967 AND MARCH 8, 1968 (TIAS 6469); FGA DATED NOVEMBER 27, 1970.

(C) IVORY COAST: IGA EFFECTED BY EXCHANGE OF NOTES SIGNED AT ABIDJAN DECEMBER 1, 1961 (TIAS 5242); FGA DATED MARCH 14, 1970 AND APRIL 1, 1970.

(D) CAMEROON: IGA EFFECTED BY EXCHANGE OF NOTES SIGNED AT WASHINGTON MARCH 7, 1967 (TIAS 6231); FGA DATED MAY 25, 1971.
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(E) MALI: IGA EFFECTED BY EXCHANGE OF NOTES DATED AT BAMAKO JUNE 4 AND 9, 1974 (TIAS 5636); FGA DATED AUGUST 24, 1972.

(F) UPPER VOLTA: IGA EFFECTED BY EXCHANGE OF NOTES SIGNED AT OUAGADOUGOU JUNE 18, 1965 (TIAS 5847); FGA DATED DECEMBER 30, 1972.

(G) TOGO: IGA SIGNED AT WASHINGTON MARCH 20, 1962 (TIAS 4983); FGA DATED SEPTEMBER 13, 1972.

(H) GHANA: IGA EFFECTED BY EXCHANGE OF NOTES SIGNED AT ACCRA SEPTEMBER 30, 1958 (TIAS 4121), AS SUPPLEMENTED BY EXCHANGE OF NOTES SIGNED AT ACCRA AND OSU MARCH 3, 1967 (TIAS 6222); FGA DATED MAY 11, 1971.

(I) GABON: IGA EFFECTED BY EXCHANGE OF NOTES SIGNED AT LIBREVILLE APRIL 10, 1963 (TIAS 5328); FGA DATED FEBRUARY 8, 1971.

10. BASIS FOR VIEW THAT IGA'S PERMIT TAW TO TRANSFER LO-

CAL CURRENCY TO EMBASSY BANK ACCOUNTS IS THAT SUCH FUNDS WERE SO TRANSFERRED "PURSUANT TO AN INVESTMENT GUARANTY" IN THAT:

(A) USG (THROUGH AID, NOW OPIC) ISSUED INVESTMENT GUARANTY TO PRUDENTIAL INSURANCE COMPANY OF AMERICA COVERING A US \$6,000,000 LOAN TO TAW, WHICH LOAN WAS USED FOR TA'S OPERATIONS THROUGHOUT AFRICA;

(B) AFTER DEFAULT BY TAW ON SUCH LOAN USG (THROUGH OPIC) PAID PRUDENTIAL UNDER SUCH INVESTMENT GUARANTY AND, IN EXCHANGE, ACQUIRED PROMISSORY NOTES ORIGINALLY ISSUED BY TAW TO PRUDENTIAL;

(C) TAW'S DEFAULT IN PAYMENT IS ATTRIBUTABLE TO TAW ACTIVITY THROUGHOUT AFRICA (INCLUDING EACH HOST COUNTRY IN WHICH TAW TRANSFERRED FUNDS TO EMBASSY BANK ACCOUNTS); AND

(D) USG (THROUGH OPIC) IS NOW COLLECTING FROM TAW THE
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PROCEEDS FROM TAW'S DISPOSAL OF ASSETS IN PARTIAL SATIS-

FACTION OF DEFAULTED AMOUNTS DUE UNDER THESE PROMISSORY NOTES.

11. EACH APPROACH SHOULD BE ADROIT TO ELICIT FOREGOING APPROVAL AS MATTER OF COMITY BETWEEN OUR TWO GOVERNMENTS (THAT U.S. EMBASSY BANK ACCOUNTS MAY BE USED FOR COLLECTION OF DEBTS OWED TO USG, AT LEAST WHERE, AS HERE, SUCH FUNDS WILL BE USED ONLY IN HOST COUNTRY AND NOT RPT NOT CONVERTED TO DOLLARS FOR REMISSION ABROAD) EVEN IF SUCH APPROVAL IS NOT RPT NOT FORTHCOMING BASED ON IGA'S ALO4E AND EVEN IF SUCH APPROVAL WOULD NOT RPT NOT NORMALLY BE GIVEN WHERE USG NOT RPT NOT INVOLVED. CARE SHOULD ALSO BE TAKEN TO AVOID ANY CRITICISM OR ADVERSE REACTION AGAINST TAW OR ITS OFFICERS, WHICH WE BELIEVE MADE CASH TRANSFERS TO EMBASSY ACCOUNTS IN GOOD FAITH.

12. PLEASE CABLE FULL TEXT OF FOREGOING APPROVALS AS SOON AS OBTAINED, AND POUCH TO DEPARTMENT ATTN: STEPHEN WHILDEN, L/M.

13. IT IS IMPORTANT TO OBTAIN FOREGOING APPROVALS PRIOR FEBRUARY 18, 1976. THANK YOU FOR YOUR ASSISTANCE. KISSINGER

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